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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 SCOTT DEAN CULP,) CASE NO.: C08-0714-JCC-MAT
09)
Petitioner,)
10)
v.) ORDER VACATING REPORT AND
11) RECOMMENDATION AND
BRUNO STOLC,) DIRECTING RESPONSE TO § 2254
12) PETITION
Respondent.)
_____)

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14 On May 6, 2008, petitioner filed a petition for writ of habeas corpus under 28 U.S.C.
15 § 2254. (Dkt. No. 1.) In his petition, petitioner presented five grounds for relief from his 2002
16 King County Superior Court convictions on charges of rape in the first degree, unlawful
17 imprisonment, assault in the third degree, and felony harassment. (*Id.*) The petition was ordered
18 served on respondent and, on July 23, 2008, respondent filed a motion seeking dismissal of the
19 petition on the grounds that it was time barred under 28 U.S.C. § 2244. (*See* Dkt. Nos. 3 and 10.)
20 On September 3, 2008, this Court issued a Report and Recommendation in which it recommended
21 that respondent's motion to dismiss be granted. (Dkt. No. 14.)

22 On September 30, 2008, respondent filed a supplement to his motion to dismiss in which

01 he advises the Court that he inadvertently omitted a portion of petitioner's state court procedural
02 history from his motion and that the complete state court procedural history reveals that
03 petitioner's federal habeas petition is not time barred. Respondent requests that the Court vacate
04 its earlier Report and Recommendation and that he be given an opportunity to file an answer to
05 petitioner's petition.

06 It appears from the exhibits submitted to the Court in conjunction with respondent's
07 supplement to his motion to dismiss that petitioner's federal habeas petition is not untimely under
08 § 2244. The Court therefore agrees that the Report and Recommendation which recommended
09 that the petition be dismissed as untimely should be vacated and that respondent should be given
10 an opportunity to file an answer to the petition.

11 Accordingly, the Court does hereby ORDER as follows:

12 (1) The Report and Recommendation issued by this Court on September 3, 2008, is
13 VACATED.

14 (2) Respondent is directed to file and serve an answer to petitioner's federal habeas
15 petition, in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States
16 District Courts, not later than *November 14, 2008*.

17 The answer will be treated in accordance with Local Rule CR 7. Accordingly, on the face
18 of the answer, respondent shall note it for consideration on the fourth Friday after filing.
19 Petitioner may file and serve a response no later than the Monday immediately preceding the
20 Friday designated for consideration of the matter, and respondents may file and serve a reply no
21 later than the Friday designated for consideration of the matter.

22 (3) The Clerk is directed to send copies of this Order to petitioner, to counsel for

01 respondent, and to the Honorable John C. Coughenour.

02 DATED this 20th day of October, 2008.

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04 Mary Alice Theiler
05 United States Magistrate Judge
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